Office-Supreme Court, U.S.
FILED
MAR 29 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM, 1965

NO. 958

JOHN PARROT and DENNIS FLOOD,

Petitioners,

-v-

CITY OF TALLAHASSEE, FLORIDA

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROY T. RHODES
102½ South Mon[illegible] Street
Tallahassee, Florida

EDW. J. HILL
107 Midyette-Moor Building
Tallahassee, Florida

Counsel for Respondent

IN THE

Supreme Court of The United States

OCTOBER TERM, 1965

NO. _____

JOHN PARROT and DENNIS FLOOD,

Petitioners,

-v-

CITY OF TALLAHASSEE, FLORIDA

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TOPICAL INDEX TO BRIEF

	PAGE
JURISDICTION	1
STATUTES, ORDINANCES and CASES INVOLVED	1
ARGUMENT	2
CONCLUSION	3

TABLE OF CITATIONS

STATUTES, ORDINANCES and CASES

	PAGE
Sec. 821.01, Florida Statutes, 1963	1
City of Tallahassee Code Sec. 23-28	1-2
28 U.S.C.A., §1257	1
Armstrong v. City of Tampa (Fla. 1958) 106 So.2d 407	2
Dresner v. City of Tallahassee (Fla. 1961) 134 So.2d 228	2
Dresner v. City of Tallahassee (Fla. 1964) 164 So.2d 208	2
State ex rel McFarland (Fla. 1954) 74 So.2d 88	2
U. S. v. Johnston 268 U.S. 220,227	3
375 U.S. 136	2
378 U.S. 539	3

JURISDICTION

Jurisdiction of this Court is invoked by Petitioners under 28 U.S.C.A., § 1257. Respondent respectfully quotes the appropriate clause therefrom:

> "Final judgments or decrees rendered by **the highest court of a state in which a decision could be had, may** be reviewed by the Supreme Court as follows:" (Emphasis added)

STATUTES AND ORDINANCES INVOLVED

It is not conceded that Section 821.01, Florida Statutes, is properly quoted in Petitioners' brief, page 3, thereof. Section 821.01, Florida Statutes, 1963, correctly reads:

> "Whoever willfully enters into the enclosed land and premises of another, or into any private residence, house, building or labor camp of another, which is occupied by the owner or his employees, being forbidden so to enter, or not being previously forbidden, is warned to depart therefrom and refuses to do so, or having departed re-enters without the previous consent of the owner, or having departed remains about in the vicinity, using profane or indecent language, shall be punished by imprisonment not exceeding six months, or by a fine not exceeding one hundred dollars."

Also, it is not conceded that Section 23-28 of the City of Tallahassee Code is properly quoted. Respondent assumes petitioners were referring to Section 23-38 of the Code which says, in part:

> "It shall be unlawful for any person to commit, within the corporate limits of the city, any act which is or shall be recognized by the laws of the state as a misdemeanor and the commission of such acts is hereby forbidden."

It is settled law that municipalities of Florida may adopt state misdemeanor statutes under their codes, and when so adopted the violation thereof becomes the violation of a city ordinance. **State ex rel McFarland** (Fla.

1954), 74 So.2d 88; **Armstrong v. City of Tampa,** (Fla. 1958), 106 So.2d 407; **Israel Dresner et als, Appellants, v. City of Tallahassee, Appellee** (Fla. 1961) 134 So.2d 228.

ARGUMENT

Respondent calls to the attention of this Court the second paragraph under the heading of "Jurisdiction," Page 2, of petitioners' brief in support of their Petition for Writ of Certiorari, which says, inter alia:

> "The District Court of Appeals is the final appellate court for discretionary review of convictions under a municipal ordinance*****".

The question of the exhaustion of state remedies and writs of certiorari to the courts of Florida by this Court, seems to have been fully answered in the case of **Israel Dresner et als, Petitioners, vs. City of Tallahassee, Respondent** (Fla. 1964). 164 So.2d 208. In that case this Court had certified certain questions of review jurisdiction to the Supreme Court of Florida; see 375 U.S. 136.

Respondent holds and urges that pursuant to **Dresner** (Fla. 1964) 164 So.2d 208, this Court accepted the answers to its certified questions, and thereupon in it **per curiam** opinion dated June 22, 1964, dismissed **Dresner's** petition for certiorari as improvidently granted; see 378 U.S. 539.

Similarly herein petitioners have not exhausted their state remedies as was the jurisdictional question in **Dresner.**

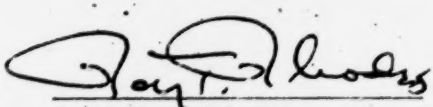
Aside from the errors pointed up in petitioners' brief, as well as no certificate of service pursuant to the rules of this court, and the lack of merit to their argument, all decision of the lower courts are correct and there is no basis for further review. As this Court stated in **U. S. vs. Johnston,** 268 U.S. 220,227:

> "We do not grant a certiorari to review evidence and discuss specific facts."

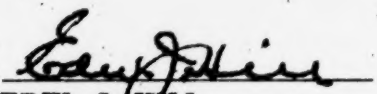
CONCLUSION

It is respectfully submitted that all decisions in this cause below are correct. Petitioners have slept on their rights by refusing to avail themselves of their state remedies and there is no basis for further review. Therefore, certiorari should be denied.

Respectfully submitted:



ROY T. RHODES
102½ South Monroe Street
Tallahassee, Florida



EDW. J. HILL
107 Midyette-Moor Building
Tallahassee, Florida

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing respondent's brief in opposition to petition for certiorari has, pursuant to Rule 33 (1) of the Revised Rules of the Supreme Court of the United States, has been served by airmail upon Earl M. Johnson, 625 West Union Street, Jacksonville, Florida, and Jack Greenberg, Leroy D. Clark, Derrick A. Bell, Jr., 10 Columbus Circle, New York, New York, attorneys for petitioners.

Earl J. Hilton

March 26, 1965